

APPEAL NO. 020582
FILED APRIL 29, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 17, 2002, with the record closing on February 21, 2002. On the issues before her, the hearing officer held that the death of the deceased husband (deceased) of the respondent (claimant/spouse) was a result of the compensable injury sustained on _____, and that the appellant (carrier) is not relieved of liability for compensation because the injury did not occur when the deceased was in a state of intoxication. The carrier has appealed all adverse determinations. The claimant/spouse files a response, urging affirmance.

DECISION

Affirmed.

The background facts of this case are undisputed. This case is a claim for death benefits. The claimant present at the CCH was the claimant/spouse. The deceased sustained a compensable back injury on _____, when he was involved in an automobile accident; he subsequently had a lumbar fusion that failed; as a result of his injuries he had been given prescriptions for Amitriptyline, Oxycodone, and Carisoprodol by his primary treating physician; on January 10, 2000, he died while sleeping; and according to the autopsy report the deceased died from "mixed drug intoxication." The drugs found in the deceased's blood after the autopsy were identified as a combination of the medications prescribed by the deceased's treating physician. There was no evidence of the presence of any illicit drugs or alcohol in the autopsy report.

The law supports compensation for a condition brought about by reasonable or necessary medical treatment for a work-related injury. Liberty Mutual Insurance Co. v. Pool, 449 S.W.2d 121, 123 (Tex. Civ. App.-Texarkana 1969, writ ref'd n.r.e.); Home Insurance Co. v. Gillum, 680 S.W.2d 844 (Tex. App.-Corpus Christi 1984, writ ref'd n.r.e.). In Texas Workers' Compensation Commission Appeal No. 93612, decided September 3, 1993, we held that the 1989 Act "supports compensation for a condition brought about by reasonable or necessary medical treatment for a work related injury." In Texas Workers' Compensation Commission Appeal No. 960574, decided May 3, 1996, the deceased in that case expired as the result of a "mixed drug overdose," and the Appeals Panel affirmed the hearing officer's decision that his compensable injury resulted in his death.

The case before us involves mixed drug intoxication. The carrier contends that because the deceased died as a result of "mixed drug intoxication" the intoxication

defense¹ precludes recovery by the deceased's beneficiaries of workers' compensation death benefits. We disagree. When a medically prescribed medication is taken, often the intended result is to affect the person's normal mental or physical faculties. To determine that such a legally intended result somehow affords the carrier relief would lead to an illogical conclusion. Anytime a person legally takes a prescribed medication that affects their normal mental or physical faculties they would be subject to an intoxication defense. We believe the legislature intended that the intoxication defense be available as a defense in situations involving misuse, or illicit use, of controlled substances or alcohol, not in situations where prescription medication is legally being taken.

There was no evidence that the deceased had ingested illegal drugs or alcohol in combination with the medications that were prescribed for the treatment of his injuries.

There was conflicting evidence offered with respect to the issues. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

¹ Section 406.032(1)(A) provides that a carrier is not liable for compensation if the employee was in a state of intoxication at the time of the injury. If the carrier is trying to argue that the deceased intentionally overdosed then arguably Section 406.032(1)(B) applies. There was no issue or evidence concerning any willful attempt by the claimant to injure himself.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TRANSCONTINENTAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge